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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

MARIA E. CUADRA,

Defendant and Appellant.

A149803

(San Francisco County  
Super. Ct. No. 226404)

Defendant Maria Cuadra pleaded guilty to one count of assault with force likely to produce great bodily injury after she threw a vase at a salon manager during a dispute over payment for a manicure.<sup>1</sup> The trial court suspended imposition of the sentence and placed Cuadra on probation for three years. On appeal, she contends that the court erred by requiring her to pay two probation-related fees before her ability to pay was evaluated as required under section 1203.1b. We disagree and affirm.

At the sentencing hearing, the trial court ordered Cuadra to pay, “but not as a condition of probation,” certain fees and assessments, including “\$150 for preparation of a presentence report” and “[u]p to \$50 per month for probation supervision.” Cuadra’s counsel below objected to both of these fees, stating that Cuadra was “the mother of two children” and had “no ability to pay.” The prosecutor offered that it was possible for the probation department to set up a payment plan, and Cuadra’s counsel responded, “[P]robation is not even supposed to suggest the probation fee or presentence report [fee]

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<sup>1</sup> Cuadra was convicted under Penal Code section 245, subdivision (a)(4). All further statutory references are to the Penal Code.

unless there's been a prior finding of ability to pay, and I don't believe the [probation] report shows that." The court overruled the objection, noting "that in the analysis and plan section of the [probation report] . . . it indicates that Ms. Cuadra was informed of her obligation to pay \$50 a month in probation supervision and of her rights according to [section 1203.1b] of the Penal Code." The court ordered Cuadra "to report to the Collections Unit [of the court] . . . to make payment arrangements when the sentencing hearing is over."

Section 1203.1b, subdivision (a) provides that "the probation officer, or his or her authorized representative, taking into account any amount that the defendant is ordered to pay in fines, assessments, and restitution, shall make a determination of the ability of the defendant to pay all or a portion of the reasonable cost of" various probation-related expenses, including the cost of probation supervision and the presentence report fee, and "determine the amount of payment and the manner in which the payments shall be made to the county, based upon the defendant's ability to pay." To ensure this occurs, the trial court is required to "order the defendant to appear before the probation officer, or his or her authorized representative, to make an inquiry into the ability of the defendant to pay all or a portion of these costs." (§ 1203.1b, subd. (a).) The statute further provides that "[t]he probation officer shall inform the defendant that the defendant is entitled to a hearing, that includes the right to counsel, in which the court shall make a determination of the defendant's ability to pay and the payment amount," and that "[t]he defendant must waive the right to a determination by the court of his or her ability to pay and the payment amount by a knowing and intelligent waiver." (*Ibid.*)

On appeal, Cuadra claims both that the probation department failed to assess her ability to pay the two challenged fees and that she did not knowingly and intelligently waive her right to a court determination of her ability to pay. The Attorney General responds that Cuadra forfeited her claims because nothing in the record shows that she "availed herself of the opportunity to present evidence before the court financial officer regarding her ability to pay the fees" after the trial court referred her to the collections unit. He relies on *People v. Aguilar* (2015) 60 Cal.4th 862, in which our state Supreme

Court held that a defendant had forfeited his challenge to fees under section 1203.1b. (*Aguilar*, at p. 864.) In *Aguilar*, the trial court had noted at the sentencing hearing that the fees would be contingent on the defendant's ability to pay and that the defendant could discuss his ability to pay when he contacted the probation department. (*Id.* at p. 865.) The Supreme Court held that the defendant had forfeited his claim because he neither objected at the sentencing hearing nor raised his ability to pay with the probation department after the trial court had said the issue could be discussed then. (*Id.* at pp. 867-868.)

We partially agree with the Attorney General. We conclude that Cuadra forfeited her claim that she did not validly waive her right to have the *trial court* assess her ability to pay the fees but adequately preserved her claim that the *probation department* failed to assess her ability to pay those fees.

As to the first claim involving her right to a court determination of her ability to pay, Cuadra argues that nothing in the record shows that she made a knowing and intelligent waiver of that right. But the probation report specifically noted that she had been informed of her rights under section 1203.1b. Although this report did not state she had waived those rights, her counsel, who was clearly aware of section 1203.1b's requirements, never objected to a lack of explicit waiver or sought a court determination of her ability to pay. Thus, any claim that the trial court was required to assess Cuadra's ability to pay was forfeited.

As to the second claim involving the probation department's failure to assess her ability to pay, Cuadra adequately preserved it by objecting at the sentencing hearing that such an assessment was not done. A similar objection was not made by the defendant in *Aguilar*. (*People v. Aguilar, supra*, 60 Cal.4th at pp. 867-868.) Moreover, in contrast to the record in *Aguilar*, the record here contains some suggestion that Cuadra voiced a concern about her ability to pay to the probation department. (See *id.* at pp. 866-868.) The probation report noted that she was unemployed and had sole custody of two minor children, and it concluded that "[b]ased on [her] financial status, she appear[ed] unable to

pay for her legal services” under section 987.8, which provides for reimbursement of the cost of court-appointed counsel.

Although we conclude that Cuadra adequately preserved the second claim, we also conclude that the claim fails on the merits. The probation report’s discussion of Cuadra’s obligation to pay the monthly probation-supervision fee and of Cuadra’s being informed of her rights under section 1203.1b immediately follows, in the same paragraph, the report’s determination that Cuadra was unable to pay for legal services under section 987.8. The report’s recommended disposition also notes that “[b]ased solely on the financial information provided by the defendant, and pending final verification . . . from the Comprehensive Collection Unit . . . of the Superior Court, the defendant does not appear to have the ability to pay the attorney fee recoupment costs pursuant to [s]ection 987.8” but then goes on to recommend the two challenged fees. The only reasonable interpretation of the report is that the probation department *did* assess Cuadra’s ability to pay and concluded that she could not afford to pay her legal fees but could afford to pay the challenged fees.

The authorities Cuadra cites does not convince us otherwise. The most pertinent authorities she relies on are *People v. O’Connell* (2003) 107 Cal.App.4th 1062 and *People v. Hall* (2002) 103 Cal.App.4th 889, both of which ordered a remand for a determination of the defendant’s ability to pay fees under section 1203.1b. (*O’Connell*, at p. 1068; *Hall*, at p. 894.) *O’Connell* and *Hall* are distinguishable because in both cases the record contained no indication that the probation department had determined the defendant’s ability to pay, that the defendant had been informed of the right to a court determination of the ability to pay, or that the defendant had knowingly and intelligently waived that right. (*O’Connell*, at pp. 1067-1068; *Hall*, at pp. 892-893.) Here, in contrast, the probation report provides evidence both that the probation department assessed Cuadra’s ability to pay and that she was informed of her rights under section 1203.1b. And, as we have said, Cuadra forfeited any claim that she was entitled to a court determination of her ability to pay.

The judgment is affirmed.

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Humes, P.J.

We concur:

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Margulies, J.

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Dondero, J.